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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 7, 2002

APPLICATION OF

CAVALIER TELEPHONE, LLC

CASE NO. PUC010213

To reclassify the Bethia Wire
Center into density cell one

ORDER ON RECONSIDERATION

On January 31, 2002, the State Corporation Commission ("Commission") issued its Final Order in this proceeding denying Cavalier Telephone, LLC's ("Cavalier"), Application to reclassify the Bethia Wire Center ("Application").¹ This Application requested that the Commission reclassify Verizon Virginia Inc.'s ("Verizon Virginia") Bethia wire center from density cell three to density cell one.

On February 19, 2002, Cavalier filed a Petition for Rehearing or Reconsideration of Application ("Petition") and Renewed Motion for Investigation and Reclassification ("Renewed Motion"). Cavalier suggests in its Petition that if the Commission relied solely upon the finding that Cavalier did not identify any specific cost reductions in the Bethia wire center, it should have reserved such judgment until Cavalier had an opportunity to conduct discovery. Furthermore, Cavalier claims that in the Final Order the Commission stated no reason why it would only consider Cavalier's Application in this docket and not in Case No. PUC970005.²

¹ Application was filed on October 16, 2001.

² *Ex Parte*: To determine prices Bell Atlantic-Virginia, Inc. is authorized to charge Competitive Local Exchange Carriers in accordance with the Telecommunications Act of 1996 and applicable State law. The Final Order in Case No. PUC970005 was issued on April 15, 1999 ("UNE Pricing Order"). "UNE" refers to unbundled network elements.

Cavalier is requesting that the Commission reconsider its Application and order Verizon Virginia to respond to Cavalier's previous discovery requests within ten calendar days of the reinstatement of the Application. In the alternative, Cavalier requests that the Commission hear its Renewed Motion as a part of Case No. PUC970005 and issue a procedural order in that case.

In denying the Application, the Commission did not rely solely on the fact that Cavalier did not identify any specific reductions in the costs of the Bethia exchange in its January 31, 2002, Order. We discussed the cost issue in some detail primarily because it appeared to us that Cavalier misunderstood the deaveraging methodology that the Commission utilized in the UNE Pricing Order. However, we find that we should now expand on our findings in the January 31, 2002, Order in order to respond to Cavalier's Petition and Renewed Motion.

Our basis for not considering Cavalier's request to consider the reclassification of the Bethia wire center in Case No. PUC970005 is simply procedural. When the UNE Pricing Order was entered in Case No. PUC970005, that Order was the Final Order in the case.³ To the extent Cavalier or any other party wanted to request reconsideration in that case, the time has long passed for such possible reconsideration.⁴

Verizon Virginia claims in its November 28, 2001, response to Cavalier's Application that it would be unfair to reclassify one wire center without, at a minimum, an entire reconfiguration of the density cell structure and a resulting recalculation of rates. This would potentially impact the classification of other wire centers and the UNE loop rates in all three density cells. The Commission agrees with Verizon Virginia's assessment that a total reconfiguration is necessary before reclassifying even one wire center in order to remain

³ See UNE Pricing Order, pg. 27.

⁴ See the Commission's Rules of Practice and Procedure as adopted on June 1, 2001. 5 VAC 5-20-220. Petition for rehearing or reconsideration.

consistent with the Commission's deaveraging methodology used in its UNE Pricing Order.

Verizon Virginia further argues that such a reconfiguration would be a "huge waste of resources" and would draw opposition from other competitive local exchange carriers ("CLECs").

The Commission fully recognizes that such a wire center reconfiguration effort could impact UNE loop prices paid by other CLECs (and ultimately their customers) in various wire centers, and we would be hesitant to undertake this in any circumstance without a greater showing of need. However, even if the Commission believed that such a reconfiguration was necessary, it does not believe it can require such without, in effect, changing its pricing decisions in the UNE Pricing Order. As stated earlier, Case No. PUC970005 is closed, and there can be no further consideration of the issues in that proceeding.⁵

Notwithstanding our procedural inability to change prices previously determined in Case No. PUC970005, the Commission could initiate a new generic case to consider Verizon Virginia's "new" costs for all unbundled network elements and interconnection.⁶ However, the Commission does not see that as a reasonable option at this time. As Verizon Virginia points out in its November 28, 2001, response, the Commission established prices in an "exhaustive, fully litigated proceeding" only a short time ago, and the Federal Communications Commission ("FCC") is currently addressing rates in a pending arbitration.⁷ Additionally, in the Final Order in this proceeding the Commission reminded Cavalier that it could pursue changes to the UNE

⁵ In addition, the UNE Pricing Order required Verizon Virginia (then Bell Atlantic-Virginia, Inc.) to prospectively use the prices determined in that proceeding in arbitrated agreements. See UNE Pricing Order, pg. 5.

⁶ Cavalier did not request such a new pricing proceeding in its Application.

⁷ See Verizon Virginia Inc.'s Response and Motion to Dismiss, November 28, 2001, pg. 2. The Commission notes that this FCC review of interconnection rates was initiated as a result of the requests filed here by AT&T Communications of Virginia, Inc., et al. and MCImetro Access Transmission Services of Virginia, Inc. and MCI WorldCom Communications of Virginia, Inc. to arbitrate interconnection issues with Verizon Virginia in Case Nos. PUC000282 and PUC000225, respectively. In both of these cases, the companies chose to pursue their arbitrations at the FCC instead of with this Commission, which intended to act solely pursuant to state law.

loop rate associated with the Bethia wire center (or any other prices, terms, and conditions) when it negotiates and/or requests arbitration of a new interconnection agreement with Verizon Virginia pursuant to § 252 of the Telecommunications Act of 1996.⁸

NOW THE COMMISSION, for the reasons stated above, is of the opinion and finds that Cavalier's Petition and Renewed Motion should be denied.

Accordingly, IT IS THEREFORE ORDERED THAT:

(1) Cavalier's Petition for Rehearing or Reconsideration of Application and Renewed Motion for Investigation and Reclassification filed on February 19, 2002, is hereby denied.

(2) There being nothing further to come before the Commission in this docket, the Final Order of January 31, 2002, remains as entered, and this case is hereby closed.

⁸ An interconnection agreement between Cavalier and Verizon Virginia was approved on June 21, 1999, in Case No. PUC990048. Cavalier opted into the agreement between MCImetro Access Transmission Services of Virginia, Inc., and Bell Atlantic-Virginia, Inc., approved on July 16, 1997, in Case No. PUC960113. The Commission notes that it believes the initial term of the Cavalier/Verizon Virginia agreement has expired and that it remains in effect on a month-to-month basis.